

18. (original) The system of claim 13, further comprising means for applying asphalt test methodologies.
19. (currently amended) The system of claim 18, wherein the asphalt test methodologies include one or more of the following: Extraction; AES300 Emulsion Test; and ARA-1 Rejuvenate Agent.
20. (original) The system of claim 13, further comprising means for applying asphalt mix test methodologies and means for applying concrete mix test methodologies.

REMARKS

The Office Action mailed Dec 20, 2002 objected to informalities in claims 5, 11, 12 and 20. Moreover, claims 1-3, 6-11 were rejected under Section 103(a) as unpatentable over Martinez (US 5,943,234) in view of Kroeger (US 2002/0165723). Claim 4 was rejected over Martinez, Kroger and Anderson (US 5,861,751). Claims 13-15, 18 and 19 were rejected over Harburda 1 (US 2002/077718) and Harburda 2 (US 2002/0077717). Finally, claims 16-17 were rejected over Harburda 1, Harburda 2, Kroger, and Anderson.

In response to the Office Action, claims 5, 11, 12 and 20 have been amended. Withdrawal of the objection is requested.

As to the rejection on claim 1, the Office Action noted that Kroeger teaches 1) accessing a server on a wide area network, 2) sending information collected from the material mixture to the server; and 3) sending one or more reports to a project manager.

Applicant notes that the present rejection does not establish *prima facie* obviousness under 35 U.S.C. § 103 and M.P.E.P. §§ 2142-2143. The Examiner bears the initial burden to establish and support *prima facie* obviousness. *In re Rinehart*, 189 U.S.P.Q. 143 (CCPA 1976). To establish *prima facie* obviousness, three basic criteria must be met. M.P.E.P. § 2142. First, the Examiner must show some suggestion or motivation, either in the Kroeger reference or in the knowledge generally available to one of ordinary skill in the art, to modify the reference so as to produce the claimed invention. M.P.E.P. § 2143.01; *In re Fine*, 5 U.S.P.Q.2d 1596 (Fed. Cir. 1988). Secondly, the Examiner must establish that there is a reasonable expectation of success for the modification. M.P.E.P. § 2142. Thirdly, the Examiner must establish that the prior art references teach or suggest all the claim limitations. M.P.E.P. § 2143.03; *In re Royka*, 180 U.S.P.Q. 580 (CCPA 1974). The teachings, suggestions, and reasonable expectations of success must be found in the prior art, rather than in Applicant's disclosure. *In re Vaeck*, 20 U.S.P.Q.2d 1438 (CAFC 1991). Applicant respectfully submits that a *prima facie* case of obviousness has not been met because the Examiner's rejection fails on at least two of the above requirements.

The Martinez et al. reference is directed at an apparatus and a method to optimize a job mix formulation (JMF) for hot mix asphaltic concrete. As noted in the Abstract, the apparatus receives JMF data input, including hand-entered data, hand-drawn data, or computer optimized data. The apparatus then generates a voids in the mineral aggregate (VMA) value. Next, it prompts the user to select a design methodology, including a Marshall mix methodology, a Hveem mix methodology, a Strategic Highway Research Program mix methodology, or a user definable mix methodology. Once the appropriate

methodology has been selected, the apparatus applies a number of computations which use the VMA value. The apparatus also generates an aggregate composition for the hot mix asphaltic composition satisfying the job mix formulation based on the JMF data input and the selected design methodology.

Kroeger relates to a different field of construction management. Initially, a database of tasks is generated, where the tasks relate to project preliminaries, finance, site acquisition, building design, construction, and/or final occupancy. During use, documents required for completion of the tasks are managed as follows:

[0096] The design focus of the present invention is to combine project management and scheduling into an integrated task driven system with responsibilities clearly assigned. This functionality is accomplished through the seamless integration of the following interrelated modules:

[0097] Project Task Manager

[0098] Document Manager

[0099] Bid Manager

[0100] Communications Manager

[0101] Pro-Active Manager

[0102] Resource & Contact Manager

[0103] Reports Manager

[0104] These modules may interface with a Timberline Accounting Management System. Additional information regarding the various modules will now be set forth in greater detail.

Kroeger thus relates to project/document/bid management. There is absolutely no suggestion to combine Kroeger with Martinez to arrive at the claimed invention of a computer-implemented method to perform **quality control** on a construction material mixture by accessing a server located on a wide-area-network; **sending information collected from the material mixture to the server; applying one or more test methodologies to the collected information; generating one or more reports from the test methodologies; and sending the one or more reports to a project manager.**

Moreover, even if combined as suggested, the result would be the Martinez system with JMF for hot mix asphaltic concrete and a networked project management system including Project Task Manager, Document Manager, Bid Manager, Communications Manager, Pro-Active Manager, Resource & Contact Manager, and Reports Manager. However, there would be no perform quality control on a construction material mixture by accessing a server located on a wide-area-network; sending information collected from the material mixture to the server; applying one or more test methodologies to the collected information.

Further, Applicant notes that the Kroeger reference fails to teach or suggest all the claim limitations of independent claim 1. The resulting combination would not be operative to provide quality control on a construction material mixture by accessing a server located on a wide-area-network; sending information collected from the material mixture to the server; applying one or more test methodologies to the collected information; generating one or more reports from the test methodologies; and sending the one or more reports to a project manager. There is no reasonable expectation of success when the two are combined as suggested.

Secondly, Applicant notes that no motivation or suggestion, either in the cited art reference or in the knowledge generally available to one of ordinary skill in the art, has been cited by the Examiner to modify the Martinez et al. reference so as to produce the claimed invention. As noted above, the Martinez et al. reference fails to teach or suggest and there is no motivation to modify the reference teaching so as provide quality control on a construction material mixture by accessing a server located on a wide-area-network; sending information collected from the material mixture to the server; applying one or

more test methodologies to the collected information; generating one or more reports from the test methodologies; and sending the one or more reports to a project manager as presently claimed.

In sum, claim 1 and those dependent therefrom are patentable over Martinez in view of Kroege.

Claim 13 was rejected over Harburda 1 (US 2002/077718) and Harburda 2 (US 2002/0077717). Harburda 1 relates to a method and system for electronic raw material tracking and quality control. The system includes a processor integrated with the production line for receiving inventory data corresponding to raw material for the product, generating an electronic production schedule for the product, generating an electronic production run sheet including the inventory data, receiving a product selection from the electronic production schedule, receiving a quantity selection for the product from the electronic production schedule, downloading data from the electronic production schedule to the electronic production run sheet and determining whether the raw material is acceptable for the product in the quantity based on the inventory data. A network is connected to the processor, and a user system is coupled to the network for accessing the electronic production schedule and the electronic production run sheet. A database is coupled to the processor for storing data relating to the production line.

Harbuda 1 relates to a manufacturing raw material quality and thus lacks the construction material mixture. Harbuda 2 is similarly lacking the construction material mixture. Moreover, neither Harbuda 1 nor Harbuda 2 shows the construction material test methodology recited in claim 13. Hence, Harbuda 1 and Harbuda 2 cannot render claim 13 as well as dependent claims 14-20 obvious.

Applicant points out that the Examiner bears the initial burden of factually establishing and supporting any *prima facie* conclusion of obviousness. *In re Rinehart*, 189 U.S.P.Q. 143 (CCPA 1976); M.P.E.P. § 2142. If the Examiner does not produce a *prima facie* case, the Applicant is under no obligation to submit evidence of nonobviousness. *Id.* In the instant case, the Examiner has not pointed to any evidence in Martinez et al., or how knowledge of those skilled in the art, provide a suggestion or motivation to modify the reference teaching so as to produce the claimed invention of claim 1 and 13 of sending information collected from the material mixture to the server; applying one or more test methodologies to the collected information; generating one or more reports from the test methodologies; and sending the one or more reports to a project manager. See *In re Zurko*, 59 U.S.P.Q.2d 1693 (Fed. Cir. 2001) ([I]n a determination of patentability the Board cannot simply reach conclusions based on its understanding or experience - or on its assessment of what would be basic knowledge or common sense. Rather, the Board must point to some concrete evidence in the record in support of these findings).

Under *Vaeck*, absent any evidence of a cited suggestion or reasonable motivation in the Martinez et al. reference, or knowledge of those skilled in the art, for interpolating positional differences to produce successive digital data sets of tooth arrangements, *prima facie* obviousness of claims 1 and 11 (and those dependent therefrom) has not been established. As such, it is respectfully requested that the § 103(a) rejection of all claims be withdrawn and the claims be allowed.

CONCLUSION

Applicant believes that the above discussion is fully responsive to all grounds of rejection set forth in the Final Office Action dated June 17, 2003.

If for any reasons the Examiner believes a telephone conference would in any way expedite resolution of the issues raised in this appeal, the Examiner is invited to telephone the undersigned at 408-528-7490.

Respectfully submitted,

By: 

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